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The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Water Efficiency Labelling and
Standards Amendment (Scheme
Enhancements) Bill 2012**

No. , 2012

(Sustainability, Environment, Water, Population and Communities)

**A Bill for an Act to amend the *Water Efficiency
Labelling and Standards Act 2005*, and for related
purposes**

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1 **A Bill for an Act to amend the *Water Efficiency***
2 ***Labelling and Standards Act 2005, and for related***
3 ***purposes***

4 The Parliament of Australia enacts:

5 **1 Short title**

6 This Act may be cited as the *Water Efficiency Labelling and*
7 *Standards Amendment (Scheme Enhancements) Act 2012.*

8 **2 Commencement**

- 9 (1) Each provision of this Act specified in column 1 of the table
10 commences, or is taken to have commenced, in accordance with
11 column 2 of the table. Any other statement in column 2 has effect
12 according to its terms.
13

Commencement information

Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	
2. Schedule 1	A single day to be fixed by Proclamation. However, if the provision(s) do not commence within the period of 6 months beginning on the day this Act receives the Royal Assent, they commence on the day after the end of that period.	
3. Schedule 2	The day after this Act receives the Royal Assent.	
4. Schedule 3, Part 1	The day this Act receives the Royal Assent.	
5. Schedule 3, Part 2	1 November 2013.	1 November 2013
6. Schedule 3, Part 3	The day this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

4 (2) Any information in column 3 of the table is not part of this Act.
5 Information may be inserted in this column, or information in it
6 may be edited, in any published version of this Act.

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.
12

1 **Schedule 1—Registration of WELS products**

2 **Part 1—Amendments**

3 *Water Efficiency Labelling and Standards Act 2005*

4 **1 Section 7 (definition of *registered*)**

5 Repeal the definition, substitute:

6 *registered*: a WELS product is *registered* if the product is
7 registered under the scheme formulated under subsection 26(1).

8 **2 Part 6**

9 Repeal the Part, substitute:

10 **Part 6—Registration of WELS products**
11

12 **26 Registration of WELS products**

- 13 (1) The Commonwealth Minister must, by legislative instrument,
14 formulate a scheme relating to the registration of WELS products.
- 15 (2) Without limiting subsection (1), the scheme may make provision
16 for, or in relation to, any of the following:
- 17 (a) applications for registration of WELS products (including
18 renewal of registration);
- 19 (b) the information or documents to be provided with
20 applications for registration (including verification by
21 statutory declaration of the information);
- 22 (c) the fees to be paid in connection with applications for
23 registration, including methods for working out such fees and
24 the circumstances in which fees may be waived or refunded
25 (either in whole or in part);
- 26 (d) the grounds for approving or refusing applications for
27 registration;
- 28 (e) the period of registration;
- 29 (f) the requirements to be met in order for WELS products to
30 remain registered;

Schedule 1 Registration of WELS products

Part 1 Amendments

- 1 (g) the consequences for the registration of a product if a WELS
2 standard for the product is varied or replaced;
3 (h) the suspension and cancellation of registration;
4 (i) the creation, maintenance and publication of a register of
5 WELS products;
6 (j) the review of decisions made by the Regulator under the
7 scheme;
8 (k) other matters in connection with the registration of WELS
9 products.

10 (3) Without limiting subsection 33(3A) of the *Acts Interpretation Act*
11 *1901*, the scheme may make different provision in relation to:

- 12 (a) different kinds of WELS products; or
13 (b) different kinds of applications; or
14 (c) different kinds of registrations; or
15 (d) different circumstances.

16 (4) Before formulating a scheme under subsection (1), the
17 Commonwealth Minister must have agreement to the terms of the
18 scheme from a majority of the participating States and Territories.

19 (5) Subsection (4) does not apply to a variation of the scheme to
20 remove an ambiguity or uncertainty, or to correct an error.

21 (6) Subsection (5) does not, by implication, limit the application of
22 subsection 33(3) of the *Acts Interpretation Act 1901* in relation to
23 the instrument.

24 (7) Despite subsection 44(1) of the *Legislative Instruments Act 2003*,
25 section 42 of that Act applies to the instrument.

26 Note: Part 6 (sunsetting) of the *Legislative Instruments Act 2003* does not
27 apply to the scheme (see section 54 of that Act).

28 **3 Paragraph 42(1)(b)**

29 Omit “(see subsection 27(2))”, substitute “imposed under the scheme
30 formulated under subsection 26(1)”.

31 **4 Section 69**

32 Repeal the section, substitute:

1 **69 Meaning of *reviewable decision* and *affected person***

2 (1) Each of the following decisions is a ***reviewable decision***:

3 (a) a decision by the Regulator under the scheme formulated
4 under subsection 26(1) to refuse to register a WELS product;

5 (b) a decision by the Regulator under the scheme formulated
6 under subsection 26(1) to cancel or suspend the registration
7 of a WELS product.

8 (2) A person whose application to register a WELS product is refused
9 is the ***affected person*** for the purposes of a decision referred to in
10 paragraph (1)(a).

11 (3) A person in relation to whom a WELS product is registered is the
12 ***affected person*** for the purposes of a decision referred to in
13 paragraph (1)(b).
14

Part 2—Transitional provisions

5 Definitions

In this Part:

commencement means the commencement of this item.

new WELS Act means the *Water Efficiency Labelling and Standards Act 2005* as in force immediately after commencement.

old WELS Act means the *Water Efficiency Labelling and Standards Act 2005* as in force immediately before commencement.

registration scheme means the scheme formulated under subsection 26(1) of the new WELS Act.

6 Pending applications at commencement

(1) This item applies if a manufacturer made an application for registration of a WELS product under section 26 of the old WELS Act and, immediately before commencement:

(a) the Regulator had not registered the product under section 28 of that Act; and

(b) the Regulator had not refused to register the product under section 29 of that Act.

(2) The application is taken, immediately after commencement, to have been refused by the Regulator.

(3) If a registration fee accompanied the application, the Regulator must refund the fee to the manufacturer.

(4) Refunds of fees under subitem (3) are taken, for the purposes of section 66 of the new WELS Act, to be payments in connection with the performance of the Regulator's functions under that Act.

7 Transitioning existing registrations

Application of item

(1) This item applies in relation to a WELS product that was registered within the meaning of the old WELS Act immediately before commencement.

1 *Transitioning registrations*

- 2 (2) Immediately after commencement:
- 3 (a) the WELS product is no longer registered within the meaning
- 4 of the old WELS Act; and
- 5 (b) all of the following apply:
- 6 (i) the product is taken, for the purposes of the new WELS
- 7 Act, to be registered within the meaning of that Act;
- 8 (ii) the registration scheme applies in relation to the product
- 9 as if the product were registered within the meaning of
- 10 the new WELS Act;
- 11 (iii) the applicable WELS standard for the product is the
- 12 applicable WELS standard under which the product was
- 13 registered within the meaning of the old WELS Act.
- 14 (3) The WELS product stops being registered within the meaning of the
- 15 new WELS Act at the end of 80 days after commencement, unless the
- 16 fee payable in accordance with the registration scheme is paid within
- 17 that period.
- 18 (4) Paragraph (2)(b) and subitem (3) have effect despite anything in the
- 19 registration scheme.

20 *Refund of fees paid under old WELS Act*

- 21 (5) If a fee accompanied the application that was made under the old WELS
- 22 Act for registration of the WELS product, the Regulator must pay the
- 23 person in relation to whom the product is registered an amount worked
- 24 out using the formula:

$$25 \quad \$1,200 - \left(\frac{N}{5} \times 1,500 \right)$$

26 where:

27 *N* is the number (which may be zero) of whole years, as determined

28 immediately before commencement, for which the product was

29 registered within the meaning of the old WELS Act.

- 30 (6) The Regulator may set off an amount payable under subitem (5) against
- 31 the amount of the fee payable under subitem (3).

Schedule 1 Registration of WELS products

Part 2 Transitional provisions

- 1 (7) Payments of amounts under subitem (5) are taken, for the purposes of
2 section 66 of the new WELS Act, to be payments in connection with the
3 performance of the Regulator's functions under that Act.

4 *Regulations*

- 5 (8) The Governor-General may make regulations prescribing additional
6 matters of a transitional nature (including any saving or application
7 provisions) relating to Part 6 of the new WELS Act.
8

1 **Schedule 2—Improving compliance**

2 **Part 1—Amendments**

3 *Water Efficiency Labelling and Standards Act 2005*

4 **1 Subsection 4(2)**

5 After “Crown liable”, insert “to a pecuniary penalty or”.

6 **2 Section 7**

7 Insert:

8 *civil penalty order* has the meaning given by subsection 44A(4).

9 **3 Section 7**

10 Insert:

11 *civil penalty provision*: a provision of this Act is a *civil penalty*
12 *provision* if:

13 (a) either:

14 (i) the provision sets out at its foot a pecuniary penalty, or
15 penalties, indicated by the words “Civil penalty”; or

16 (ii) another provision of this Act provides that the provision
17 is a civil penalty provision; and

18 (b) the provision is of one of the following kinds:

19 (i) a subsection, or a section that is not divided into
20 subsections;

21 (ii) a subregulation, or a regulation that is not divided into
22 subregulations.

23 **4 Section 7**

24 Insert:

25 *evidential burden*, in relation to a matter, means the burden of
26 adducing or pointing to evidence that suggests a reasonable
27 possibility that the matter exists or does not exist.

28 **5 Section 7 (definition of *evidential material*)**

29 Repeal the definition, substitute:

- 1 *evidential material* means:
2 (a) in respect of an offence against this Act:
3 (i) any thing with respect to which the offence has been
4 committed or is suspected, on reasonable grounds, to
5 have been committed; or
6 (ii) any thing as to which there are reasonable grounds for
7 suspecting that it will afford evidence as to the
8 commission of the offence; or
9 (iii) any thing as to which there are reasonable grounds for
10 suspecting that it is intended to be used for the purpose
11 of committing the offence; and
12 (b) in respect of a contravention of a civil penalty provision:
13 (i) any thing with respect to which the civil penalty
14 provision has been contravened or is suspected, on
15 reasonable grounds, of having been contravened; or
16 (ii) any thing as to which there are reasonable grounds for
17 suspecting that it will afford evidence as to the
18 contravention of the civil penalty provision; or
19 (iii) any thing as to which there are reasonable grounds for
20 suspecting that it is intended to be used for the purpose
21 of contravening the civil penalty provision.

22 **6 Section 7**

23 Insert:

- 24 *relevant court* means:
25 (a) the Federal Court; or
26 (b) the Federal Magistrates Court; or
27 (c) a court of a State or Territory that has jurisdiction in relation
28 to matters arising under this Act.

29 **7 Part 7 (heading)**

30 Repeal the heading, substitute:

31 **Part 7—Offences and civil penalties relating to the** 32 **WELS scheme**

33 **8 Division 2 of Part 7**

1 Repeal the Division, substitute:

2 **Division 2—Registration and labelling**

3 **32A False or misleading information or documents**

4 A person must not provide information or a document with an
5 application for registration of a WELS product if the person
6 knows, or is reckless as to whether, the information or document is
7 false or misleading in a material particular.

8 Civil penalty: 60 penalty units.

9 Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or
10 misleading statements.

11 **33 Supply of unregistered WELS products**

12 (1) A person contravenes this subsection if:

- 13 (a) the person supplies a WELS product; and
14 (b) the applicable WELS standard requires the product to be
15 registered for the purposes of the supply.

16 (2) Subsection (1) does not apply if the WELS product is registered at
17 the time of the supply.

18 *Strict liability offence*

19 (3) A person commits an offence of strict liability if the person
20 contravenes subsection (1).

21 Penalty: 60 penalty units.

22 Note 1: For strict liability, see section 6.1 of the *Criminal Code*.

23 Note 2: A defendant bears an evidential burden in relation to the matter in
24 subsection (2): see subsection 13.3(3) of the *Criminal Code*.

25 *Civil penalty provision*

26 (4) A person is liable to a civil penalty if the person contravenes
27 subsection (1).

28 Civil penalty: 60 penalty units.

- 1 (5) A person who wishes to rely on subsection (2) in proceedings for a
2 civil penalty order bears an evidential burden in relation to the
3 matter in that subsection.

4 **34 Supply of WELS products that are not WELS-labelled**

- 5 (1) A person contravenes this subsection if:
6 (a) the person supplies a WELS product; and
7 (b) the applicable WELS standard requires the WELS product to
8 be WELS-labelled for the purposes of the supply; and
9 (c) the product is not WELS-labelled.

10 Note: For *WELS-labelled*, see subsection 20(1).

11 *Strict liability offence*

- 12 (2) A person commits an offence of strict liability if the person
13 contravenes subsection (1).

14 Penalty: 60 penalty units.

15 Note: For strict liability, see section 6.1 of the *Criminal Code*.

16 *Civil penalty provision*

- 17 (3) A person is liable to a civil penalty if the person contravenes
18 subsection (1).

19 Civil penalty: 60 penalty units.

20 **9 Section 35 (heading)**

21 Repeal the heading, substitute:

22 **35 Minimum water efficiency**

23 **10 Subsection 35(1)**

24 Omit “commits an offence”, substitute “contravenes this subsection”.

25 **11 Subsection 35(1) (penalty)**

26 Repeal the penalty.

27 **12 Subsection 35(2)**

28 Repeal the subsection, substitute:

1 *Strict liability offence*

2 (2) A person commits an offence of strict liability if the person
3 contravenes subsection (1).

4 Penalty: 60 penalty units.

5 Note: For strict liability, see section 6.1 of the *Criminal Code*.

6 *Civil penalty provision*

7 (3) A person is liable to a civil penalty if the person contravenes
8 subsection (1).

9 Civil penalty: 60 penalty units.

10 **13 Section 36 (heading)**

11 Repeal the heading, substitute:

12 **36 Minimum general performance**

13 **14 Subsection 36(1)**

14 Omit “commits an offence”, substitute “contravenes this subsection”.

15 **15 Subsection 36(1) (penalty)**

16 Repeal the penalty.

17 **16 Subsection 36(2)**

18 Repeal the subsection, substitute:

19 *Strict liability offence*

20 (2) A person commits an offence of strict liability if the person
21 contravenes subsection (1).

22 Penalty: 60 penalty units.

23 Note: For strict liability, see section 6.1 of the *Criminal Code*.

24 *Civil penalty provision*

25 (3) A person is liable to a civil penalty if the person contravenes
26 subsection (1).

1 Civil penalty: 60 penalty units.

2 **17 Subsection 37(1)**

3 Omit “commits an offence”, substitute “contravenes this subsection”.

4 **18 Subsection 37(1) (penalty)**

5 Repeal the penalty.

6 **19 Subsection 37(2)**

7 Repeal the subsection, substitute:

8 *Strict liability offence*

9 (2) A person commits an offence of strict liability if the person
10 contravenes subsection (1).

11 Penalty: 60 penalty units.

12 Note: For strict liability, see section 6.1 of the *Criminal Code*.

13 *Civil penalty provision*

14 (3) A person is liable to a civil penalty if the person contravenes
15 subsection (1).

16 Civil penalty: 60 penalty units.

17 **20 After section 37**

18 Insert:

19 **37A WELS-labelling products that are not WELS products**

20 (1) A person contravenes this subsection if:

21 (a) the person supplies a product; and

22 (b) the product is, or purports to be, WELS-labelled; and

23 (c) the product is not a WELS product.

24 *Strict liability offence*

25 (2) A person commits an offence of strict liability if the person
26 contravenes subsection (1).

27 Penalty: 60 penalty units.

1 Note: For strict liability, see section 6.1 of the *Criminal Code*.

2 *Civil penalty provision*

3 (3) A person is liable to a civil penalty if the person contravenes
4 subsection (1).

5 Civil penalty: 60 penalty units.

6 **21 Subsection 38(1)**

7 Omit “commits an offence”, substitute “contravenes this subsection”.

8 **22 Subsection 38(1) (penalty)**

9 Repeal the penalty.

10 **23 Subsection 38(2)**

11 Repeal the subsection, substitute:

12 *Strict liability offence*

13 (2) A person commits an offence of strict liability if the person
14 contravenes subsection (1).

15 Penalty: 60 penalty units.

16 Note: For strict liability, see section 6.1 of the *Criminal Code*.

17 *Civil penalty provision*

18 (3) A person is liable to a civil penalty if the person contravenes
19 subsection (1).

20 Civil penalty: 60 penalty units.

21 **24 Subsection 40(1)**

22 Omit “Part 7”, substitute “this Act”.

23 **25 After subsection 40(1)**

24 Insert:

25 (1A) The regulations may provide for a person who is alleged to have
26 contravened a civil penalty provision to pay a penalty to the

1 Commonwealth as an alternative to proceedings for a civil penalty
2 order.

3 **26 At the end of subsection 40(2)**

4 Add “or that contravention”.

5 **27 After Division 3 of Part 8**

6 Insert:

7 **Division 3A—Compliance audits**

8 **43A Compliance audits**

- 9 (1) This section applies if the Regulator:
- 10 (a) suspects, on reasonable grounds, that a person has engaged,
11 is engaging or is proposing to engage in conduct that
12 constituted, constitutes or would constitute:
- 13 (i) an offence against this Act; or
14 (ii) a contravention of a civil penalty provision; and
- 15 (b) is satisfied that it would be in the public interest to give the
16 person a notice under this section.
- 17 (2) The Regulator may, by written notice given to the person, require
18 the person:
- 19 (a) to undertake, or arrange for another person to undertake, an
20 audit of whichever of the following is specified in the notice:
- 21 (i) the person’s compliance with this Act;
22 (ii) one or more specified aspects of the person’s
23 compliance with this Act; and
- 24 (b) to give the Regulator a written report setting out the results of
25 the audit.
- 26 (3) The notice must specify:
- 27 (a) if the notice requires the person to arrange another person to
28 undertake the audit—requirements relating to the
29 qualifications and independence of the other person; and
- 30 (b) the matters to be covered by the audit; and
- 31 (c) the period within which the audit must be undertaken; and
- 32 (d) the form and content of the report; and

- 1 (e) the period within which the report must be given to the
2 Regulator.
- 3 (4) A person contravenes this subsection if the person is subject to a
4 requirement under subsection (2) and the person fails to comply
5 with the requirement.
- 6 (5) A person commits an offence of strict liability if the person
7 contravenes subsection (4).
- 8 Penalty: 30 penalty units.
- 9 Note: For strict liability, see section 6.1 of the *Criminal Code*.
- 10 (6) A person is liable to a civil penalty if the person contravenes
11 subsection (4).
- 12 Civil penalty: 30 penalty units.
- 13 (7) A notice under subsection (2) is not a legislative instrument.

14 **Division 3B—Remedial action**

15 **43B Remedial action**

- 16 (1) This section applies if the Regulator:
- 17 (a) suspects, on reasonable grounds, that a person has engaged,
18 is engaging or is proposing to engage in conduct that
19 constituted, constitutes or would constitute:
- 20 (i) an offence against this Act; or
21 (ii) a contravention of a civil penalty provision; and
- 22 (b) is satisfied that it would be in the public interest to give the
23 person a notice under this section.
- 24 (2) The Regulator may give the person a written notice requiring the
25 person, within a specified period, to take specified action directed
26 toward either or both of the following:
- 27 (a) remedying the conduct;
28 (b) ensuring that the person does not engage, or continue to
29 engage, in such conduct in the future.

1 (3) A person contravenes this subsection if the person is subject to a
2 requirement under subsection (2) and the person fails to comply
3 with the requirement.

4 (4) A person commits an offence of strict liability if the person
5 contravenes subsection (3).

6 Penalty: 30 penalty units.

7 Note: For strict liability, see section 6.1 of the *Criminal Code*.

8 (5) A person is liable to a civil penalty if the person contravenes
9 subsection (3).

10 Civil penalty: 30 penalty units.

11 (6) A notice under subsection (2) is not a legislative instrument.

12 **28 Subsections 44(1) and (2)**

13 After “against this Act”, insert “or a contravention of a civil penalty
14 provision”.

15 **29 After Part 8**

16 Insert:

17 **Part 8A—Civil penalty orders**

18 **Division 1—Obtaining a civil penalty order**

19 **44A Civil penalty orders**

20 *Application for order*

21 (1) The Regulator may apply to a relevant court for an order that a
22 person, who is alleged to have contravened a civil penalty
23 provision, pay the Commonwealth a pecuniary penalty.

24 (2) The Regulator must make the application within 4 years of the
25 alleged contravention.

1 *Court may order person to pay pecuniary penalty*

- 2 (3) If the relevant court is satisfied that the person has contravened the
3 civil penalty provision, the court may order the person to pay to the
4 Commonwealth such pecuniary penalty for the contravention as the
5 court determines to be appropriate.

6 Note: Subsection (5) sets out the maximum penalty that the court may order
7 the person to pay.

- 8 (4) An order under subsection (3) is a *civil penalty order*.

9 *Determining pecuniary penalty*

- 10 (5) The pecuniary penalty must not be more than:
11 (a) if the person is a body corporate—5 times the pecuniary
12 penalty specified for the civil penalty provision; and
13 (b) otherwise—the pecuniary penalty specified for the civil
14 penalty provision.
- 15 (6) In determining the pecuniary penalty, the relevant court may take
16 into account all relevant matters, including:
17 (a) the nature and extent of the contravention; and
18 (b) the nature and extent of any loss or damage suffered because
19 of the contravention; and
20 (c) the circumstances in which the contravention took place; and
21 (d) whether the person has previously been found by a court to
22 have engaged in any similar conduct.

23 **44B Civil enforcement of penalty**

- 24 (1) A pecuniary penalty is a debt payable to the Commonwealth.
- 25 (2) The Commonwealth may enforce a civil penalty order as if it were
26 an order made in civil proceedings against the person to recover a
27 debt due by the person. The debt arising from the order is taken to
28 be a judgement debt.

29 **44C Conduct contravening more than one civil penalty provision**

- 30 (1) If conduct constitutes a contravention of 2 or more civil penalty
31 provisions, proceedings may be instituted under this Part against a

1 person in relation to the contravention of any one or more of those
2 provisions.

3 (2) However, the person is not liable to more than one pecuniary
4 penalty under this Part in relation to the same conduct.

5 **44D Multiple contraventions**

6 (1) A relevant court may make a single civil penalty order against a
7 person for multiple contraventions of a civil penalty provision if
8 proceedings for the contraventions are founded on the same facts,
9 or if the contraventions form, or are part of, a series of
10 contraventions of the same or a similar character.

11 Note: For continuing contraventions of civil penalty provisions, see
12 section 44N.

13 (2) However, the penalty must not exceed the sum of the maximum
14 penalties that could be ordered if a separate penalty were ordered
15 for each of the contraventions.

16 **44E Proceedings may be heard together**

17 A relevant court may direct that 2 or more proceedings for civil
18 penalty orders are to be heard together.

19 **44F Civil evidence and procedure rules for civil penalty orders**

20 A relevant court must apply the rules of evidence and procedure
21 for civil matters when hearing proceedings for a civil penalty
22 order.

23 **44G Contravening a civil penalty provision is not an offence**

24 A contravention of a civil penalty provision is not an offence.

25 **Division 2—Civil proceedings and criminal proceedings**

26 **44H Civil proceedings after criminal proceedings**

27 A relevant court may not make a civil penalty order against a
28 person for a contravention of a civil penalty provision if the person
29 has been convicted of an offence constituted by conduct that is the

1 same, or substantially the same, as the conduct constituting the
2 contravention.

3 **44J Criminal proceedings during civil proceedings**

- 4 (1) Proceedings for a civil penalty order against a person for a
5 contravention of a civil penalty provision are stayed if:
6 (a) criminal proceedings are commenced or have already been
7 commenced against the person for an offence; and
8 (b) the offence is constituted by conduct that is the same, or
9 substantially the same, as the conduct alleged to constitute
10 the contravention.
- 11 (2) The proceedings for the order (the *civil proceedings*) may be
12 resumed if the person is not convicted of the offence. Otherwise:
13 (a) the civil proceedings are dismissed; and
14 (b) costs must not be awarded in relation to the civil proceedings.

15 **44K Criminal proceedings after civil proceedings**

16 Criminal proceedings may be commenced against a person for
17 conduct that is the same, or substantially the same, as conduct that
18 would constitute a contravention of a civil penalty provision
19 regardless of whether a civil penalty order has been made against
20 the person in relation to the contravention.

21 **44L Evidence given in civil proceedings not admissible in criminal
22 proceedings**

- 23 (1) Evidence of information given, or evidence of production of
24 documents by an individual, is not admissible in criminal
25 proceedings against the individual if:
26 (a) the individual previously gave the evidence or produced the
27 documents in proceedings for a civil penalty order against the
28 individual for an alleged contravention of a civil penalty
29 provision (whether or not the order was made); and
30 (b) the conduct alleged to constitute the offence is the same, or
31 substantially the same, as the conduct alleged to constitute
32 the contravention.

- 1 (2) However, subsection (1) does not apply to criminal proceedings in
2 relation to the falsity of the evidence given by the individual in the
3 proceedings for the civil penalty order.

4 **Division 3—Miscellaneous**

5 **44M Ancillary contravention of civil penalty provisions**

- 6 (1) A person must not:
7 (a) attempt to contravene a civil penalty provision; or
8 (b) aid, abet, counsel or procure a contravention of a civil
9 penalty provision; or
10 (c) induce (by threats, promises or otherwise) a contravention of
11 a civil penalty provision; or
12 (d) be in any way, directly or indirectly, knowingly concerned in,
13 or party to, a contravention of a civil penalty provision; or
14 (e) conspire with others to effect a contravention of a civil
15 penalty provision.

16 Note: Section 44Q (which provides that a person's state of mind does not
17 need to be proven in relation to a civil penalty provision) does not
18 apply to subsection (1) of this section.

19 *Civil penalty*

- 20 (2) A person who contravenes subsection (1) in relation to a civil
21 penalty provision is taken to have contravened the provision.

22 **44N Continuing contraventions of civil penalty provisions**

- 23 (1) If an act or thing is required under a civil penalty provision to be
24 done:
25 (a) within a particular period; or
26 (b) before a particular time;
27 then the obligation to do that act or thing continues until the act or
28 thing is done (even if the period has expired or the time has
29 passed).
- 30 (2) A person who contravenes a civil penalty provision that requires an
31 act or thing to be done:
32 (a) within a particular period; or
33 (b) before a particular time;

1 (2) Subsection (1) does not affect the operation of section 44P (which
2 is about mistake of fact).

3 **30 Paragraphs 47(b) and 58(2)(b)**

4 Repeal the paragraphs, substitute:

5 (b) investigating:

6 (i) a possible contravention of a civil penalty provision; or

7 (ii) a possible offence against this Act.

8 **31 At the end of section 60**

9 Add “or a contravention of a civil penalty provision”.

10 **32 At the end of subsection 77(2)**

11 Add:

12 ; and (c) declare that specified provisions of the regulations are civil
13 penalty provisions for the purposes of this Act, and prescribe
14 penalties for contraventions of such provisions that do not
15 exceed:

16 (i) for a body corporate—250 penalty units; or

17 (ii) in any other case—50 penalty units.

18

1 **Part 2—Application provisions**

2 **33 Application provisions**

3 (1) Section 32A of the *Water Efficiency Labelling and Standards Act 2005*,
4 as inserted by item 8 of this Schedule, applies in relation to applications
5 made after the commencement of this item.

6 (2) Sections 43A and 43B of the *Water Efficiency Labelling and Standards*
7 *Act 2005*, as inserted by item 27 of this Schedule, apply in relation to
8 conduct engaged in after the commencement of this item.
9

1 **Schedule 3—Other amendments**

2 **Part 1—Administrative improvements**

3 *Water Efficiency Labelling and Standards Act 2005*

4 **1 Section 7**

5 Insert:

6 *Commonwealth Department* means the Department of State of the
7 Commonwealth that deals with the matters to which this Act
8 relates.

9 **2 Section 7**

10 Insert:

11 *Federal Court* means the Federal Court of Australia.

12 **3 Section 7 (definition of offence against this Act)**

13 Repeal the definition, substitute:

14 *offence against this Act* includes:

- 15 (a) an offence against section 6 of the *Crimes Act 1914*; and
16 (b) an offence against section 11.1, 11.4, 11.5, 136.1, 137.1 or
17 137.2 of the *Criminal Code*;
18 that relates to this Act.

19 **4 Section 7 (definition of participating State or Territory)**

20 Repeal the definition, substitute:

21 *participating State or Territory*: a State or Territory is a
22 *participating State or Territory* if there is a corresponding
23 State-Territory law for the State or Territory.

24 **5 Section 7 (definition of supply)**

25 Repeal the definition, substitute:

26 *supply* has the meaning given by section 7A.

27 **6 Section 7**

- 1 (a) that the products comply with one or more requirements
2 relating to plumbing imposed by or under a law of a State or
3 Territory, as in force from time to time;
4 (b) that a specified type of person or body certifies that the
5 products comply with one or more requirements relating to
6 plumbing imposed by or under a law of a State or Territory,
7 as in force from time to time.

8 **11 Sections 21 and 22**

9 Repeal the sections, substitute:

10 **21 The Regulator**

- 11 (1) The Commonwealth Secretary must, in writing, designate a
12 position in the Commonwealth Department as the position of
13 Regulator.

14 Note: For creation of positions, see section 77 of the *Public Service Act*
15 *1999*.

- 16 (2) The position of Regulator can only be occupied by an SES
17 employee.
18 (3) The *Regulator* is the SES employee who occupies that position.
19 (4) An instrument under subsection (1) is not a legislative instrument.

20 **22 Functions of the Regulator**

21 The Regulator has the following functions:

- 22 (a) to administer the WELS scheme;
23 (b) to provide information and advice in relation to the WELS
24 scheme;
25 (c) to undertake or commission research in relation to the WELS
26 scheme;
27 (d) to monitor and enforce compliance with the WELS scheme;
28 (e) such other functions as are conferred on the Regulator by this
29 Act or any other law.

30 **12 Paragraphs 47(a) and 58(2)(a)**

31 Omit “or the regulations”.

1 **13 Paragraphs 65(b), 66(b) and 68(a)**

2 Omit “, the regulations”.

3 **14 Subsections 71(3) and (4)**

4 Repeal the subsections, substitute:

5 (3) The Regulator must, on receiving an application:

6 (a) review the reviewable decision personally; or

7 (b) cause the reviewable decision to be reviewed by a person:

8 (i) to whom the Regulator’s power under this section is
9 delegated; and

10 (ii) who was not involved in the making of the decision; and

11 (iii) who occupies a position in the Commonwealth
12 Department that is senior to that occupied by any person
13 involved in making the decision.

14 (4) After the Regulator, or the person mentioned in paragraph (3)(b),
15 has reviewed the reviewable decision, the Regulator or the person
16 may:

17 (a) make a decision affirming, varying or revoking the
18 reviewable decision; and

19 (b) if the decision is revoked—make such other decision as the
20 Regulator or the person thinks appropriate.

21 **15 Paragraph 72(1)(b)**

22 Omit “by the Regulator”.

23 **16 After subsection 76(1)**

24 Insert:

25 (1A) The Commonwealth Minister must cause further independent
26 reviews of the operation of the WELS scheme to be undertaken:

27 (a) within 5 years after the completion of the review referred to
28 in subsection (1); and

29 (b) thereafter, within 5 years after the completion of the previous
30 review.

31 **17 Subsection 76(2)**

32 Omit “the review”, substitute “a review under this section”.

- 1 **18 Subsection 76(3)**
2 Omit “the review”, substitute “each review”.
- 3 **19 Paragraph 77(2)(a)**
4 Omit “(including the regulations)”.
- 5

1 **Part 2—Removal of voluntary registrations**

2 ***Water Efficiency Labelling and Standards Act 2005***

3 **20 Subsections 19(2) to (4)**

4 Repeal the subsections, substitute:

5 (2) The ***WELS standard*** must require the products to be registered for
6 the purposes of specified supplies of the product.

7 (3) The ***WELS standard*** may require one or more of the following:

8 (a) that the products comply with specified minimum water
9 efficiency requirements for the purposes of specified supplies
10 of the product;

11 (b) that the products comply with specified minimum general
12 performance requirements for the purposes of specified
13 supplies of the product;

14 (c) that the products comply with one or more requirements
15 relating to plumbing imposed by or under a law of a State or
16 Territory, as in force from time to time;

17 (d) that a specified type of person or body certifies that the
18 products comply with one or more requirements relating to
19 plumbing imposed by or under a law of a State or Territory,
20 as in force from time to time;

21 (e) that the products be WELS-labelled for the purposes of
22 specified supplies of the product.
23

1 **Part 3—Application and transitional provisions**

2 **21 Application of amendments**

- 3 (1) The amendment made by item 9 of this Schedule applies in relation to
4 determinations made after the commencement of that item.
- 5 (2) The amendment made by item 14 of this Schedule applies in relation to
6 a reviewable decision made after the commencement of that item.
- 7 (3) The amendment made by item 20 applies in relation to WELS standards
8 made after the commencement of that item.

9 **22 Transitional provision**

10 Despite the repeal of section 21 of the *Water Efficiency Labelling and*
11 *Standards Act 2005* by item 11 of this Schedule, the Commonwealth
12 Secretary continues to be the Regulator after the commencement of that
13 item until a designation is made under section 21 of that Act as in force
14 after that commencement.